

House Bill 369 (AS PASSED HOUSE AND SENATE)

By: Representatives Hilton of the 95th, Marin of the 96th, and Holcomb of the 81st

A BILL TO BE ENTITLED
AN ACT

1 To create the City of Peachtree Corners Public Facilities Authority; to provide for a short title
2 and legislative findings; to confer powers and impose duties on the authority; to provide for
3 the membership and the appointment of members of the authority and their terms of office,
4 qualifications, duties, powers, and compensation; to provide for vacancies, organization,
5 meetings, and expenses; to provide for definitions; to provide for the issuance and sale of
6 revenue bonds and their negotiability, sale, and use of proceeds from such sales; to provide
7 for conditions for issuance of such obligations; to prohibit the pledge of credit for the
8 payment of bonds; to provide for trust indentures; to provide for payment of bond proceeds;
9 to provide for bondholder remedies and protection; to provide for refunding bonds; to
10 provide for bond validation; to provide for venue and jurisdiction; to provide for trust funds;
11 to provide for the authority's purpose; to provide for charges; to provide for rules and
12 regulations; to provide for tort immunity; to provide for tax exemptions and exemptions from
13 levy and sale; to provide for supplemental powers; to provide for effect on other
14 governments; to provide for liberal construction; to provide for severability; to provide for
15 related matters; to provide an effective date; to repeal conflicting laws; and for other
16 purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**

19 Short title.

20 This Act shall be known and may be cited as the "City of Peachtree Corners Public Facilities
21 Authority Act."

22

SECTION 2.

23

Creation of authority; purpose.

24 There is created a body corporate and politic to be known as the "City of Peachtree Corners
 25 Public Facilities Authority," which shall be deemed to be a public corporation. Such
 26 corporation shall be separate and distinct from any public corporation or other entity
 27 heretofore created by the General Assembly and shall be an instrumentality of the State of
 28 Georgia exercising governmental powers. The authority is created for the purpose of
 29 promoting the public good and general welfare of the citizens of the City of Peachtree
 30 Corners and assisting the City of Peachtree Corners in providing facilities, equipment, and
 31 services to the citizens of the City of Peachtree Corners in the most efficient means possible.
 32 In connection with the exercise of any of its powers, the members of the authority may make
 33 findings or determinations that will promote the public good and general welfare of the
 34 citizens of the City of Peachtree Corners and assist the City of Peachtree Corners in
 35 providing facilities, equipment, and services, and such findings or determinations, if made,
 36 shall be conclusive and binding.

37

SECTION 3.

38

Definitions.

39 As used in this Act, the following words and terms shall have the meaning specified unless
 40 the context or use clearly indicates a different meaning or intent:

41 (1) "Authority" means the City of Peachtree Corners Public Facilities Authority created
 42 by this Act.

43 (2) "Cost of the project" means and includes:

44 (A) The cost of construction;

45 (B) The cost of all land and interests therein, properties, rights, easements, and franchises
 46 acquired;

47 (C) The cost of acquiring, constructing, or erecting buildings, improvements, materials,
 48 labor, and services;

49 (D) The cost of all machinery and equipment;

50 (E) Financing charges and interest prior to and during construction or acquisition of any
 51 project and for six months after such project is placed into service and operational at the
 52 level intended;

53 (F) The cost of construction, engineering, architectural, fiscal, accounting, inspection,
 54 and legal expenses relating to a project or to the financing or refinancing of any project

55 and other expenses necessary or incident to determining the feasibility or practicability
56 of any project; and

57 (G) Administrative expenses relating to any project or the financing or refinancing
58 thereof and such other expenses as may be necessary or incident to the financing of a
59 project authorized by this Act, the acquisition, construction, renovation, reconstruction,
60 or remodeling of a project, and the placing of the same in operation.

61 Any obligation or expense incurred for any of the purposes in this paragraph shall be
62 regarded as part of the cost of the project and may be paid or reimbursed as such out of any
63 funds of the authority, including proceeds of any revenue bonds issued under the provisions
64 of this Act for any such project or projects and the proceeds of the sale of any contracts,
65 lease agreements, or installment sales agreements or the amounts payable thereunder, either
66 directly or by the creation of interests therein.

67 (3) "City" means the City of Peachtree Corners, Georgia, or its successor.

68 (4) "Project" means and includes the acquisition, construction, equipping, maintenance,
69 and operation of any undertaking as defined in Code Section 36-82-61 of the O.C.G.A.;
70 any undertaking, project, or service for which any governmental body contracting with the
71 authority is authorized by law to undertake in the performance of its governmental,
72 administrative, or proprietary functions; all personal property to be used in connection
73 therewith; and the lease and sale of any part or all of such facilities, including real and
74 personal property, so as to ensure the efficient and proper development, maintenance, and
75 operation of such project deemed by the authority to be necessary, convenient, or desirable.
76 A project may be composed exclusively of real or personal property, equipment, fixtures,
77 machinery, or other property of any nature whatsoever used or useful in connection with
78 the governmental, administrative, and proprietary functions of any governmental body
79 contracting with the authority for its services or facilities.

80 (5) "Revenue bonds" means revenue bonds issued by the authority pursuant to the terms
81 of this Act or under Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond
82 Law."

83 **SECTION 4.**

84 Powers of the authority.

85 The authority shall have the power:

- 86 (1) To hold, own, lease, transfer, and convey real and personal property or interests
87 therein;
- 88 (2) To sue and be sued;
- 89 (3) To have and use a seal and to alter the same at its pleasure;

- 90 (4) To acquire, construct, purchase, own, equip, operate, extend, improve, lease, and sell
91 any project;
- 92 (5) To exercise the powers conferred upon a public corporation or a public authority by
93 Article IX, Section III, Paragraph I of the Constitution of Georgia, and such authority is
94 expressly declared to be a public corporation or a public authority within the meaning of
95 such provision of the Constitution of Georgia;
- 96 (6) To acquire property and projects in its own name by gift or by purchase on such terms
97 and conditions and in such manner as it may deem proper. If the authority shall deem it
98 expedient to construct any project on real property or any interest therein or usufruct which
99 is subject to the control of the city, the city is authorized to convey such real property or
100 interest therein to the authority for no consideration or for such consideration as may be
101 agreed upon by the authority and the city, taking into consideration the public benefit to be
102 derived from such conveyance. The city may transfer such property or interest therein
103 without regard to any determination as to whether or not such property or interest therein
104 is surplus;
- 105 (7) To accept gifts and bequests for its corporate purposes;
- 106 (8) To appoint, select, and employ, with or without bidding, as the authority may choose,
107 officers, agents, and employees, including engineering, architectural, and construction
108 experts, fiscal agents, underwriters or other advisors, and attorneys, and to fix their
109 compensation;
- 110 (9) To make and execute with public and private persons and corporations contracts, lease
111 agreements, rental agreements, installment sale agreements, and other instruments relating
112 to its projects and incident to the exercise of the powers of the authority, including
113 contracts for constructing, renting, leasing, and selling its projects for the benefit of the
114 city; and, without limiting the generality of this paragraph, authority is specifically granted
115 to the authority and to the city to enter into contracts, lease agreements, rental agreements,
116 installment sale agreements, and related agreements for a term not exceeding 50 years as
117 provided in Article IX, Section III of the Constitution of Georgia;
- 118 (10) To lease, sell, transfer, or otherwise dispose of any property, real or personal, or assets
119 of the authority or to assign its rights under its contracts, lease agreements, or installment
120 sale agreements or its right to receive payments thereunder, either directly or through trust
121 or custodial arrangements whereby interests are created in such contracts, lease agreements,
122 or installment sale agreements or the payments to be received thereunder through the
123 issuance of trust certificates, certificates of participation, custodial receipts, or other similar
124 instruments;
- 125 (11) To accept loans or grants of money or property of any kind from the United States,
126 the State of Georgia, or any political subdivision of the State of Georgia;

- 127 (12) To borrow money for any of its corporate purposes and to issue revenue bonds, notes,
128 or other types of indebtedness payable solely from funds or revenues of the authority
129 pledged for that purpose; to pledge and assign any of its revenues, income, rent, charges,
130 and fees to provide for the payment of the same; and to provide for the rights of the holders
131 of such revenue bonds;
- 132 (13) To enter into interest rate swaps, collars, or other types of interest rate management
133 agreements or credit enhancement or liquidity agreements relating to any obligations of the
134 authority, provided that the obligation of the authority under such agreements shall not be
135 a general obligation of the authority but shall be a limited obligation of the authority
136 payable from a specific source of funds identified for such purpose;
- 137 (14) To make such rules and regulations governing its employees and property as it may
138 in its discretion deem proper;
- 139 (15) To be sued the same as any private corporation on any contractual obligation of the
140 authority. The authority shall have the same rights to sue any other person or entity as any
141 private corporation; and
- 142 (16) To issue its revenue bonds, notes, or other obligations to finance or refinance any
143 project which may be financed by the city under Article 3 of Chapter 82 of Title 36 of the
144 O.C.G.A., the "Revenue Bond Law."

145

SECTION 5.

146

Members of the authority; terms of office.

147 The authority shall consist of seven members who shall be appointed by the mayor and
148 council of the City of Peachtree Corners. The mayor and councilmembers of the City of
149 Peachtree Corners may be appointed as members of the authority. In the event that the
150 mayor or any councilmember is appointed as a member of the authority, such mayor or
151 councilmember shall hold the office of member of the authority for a term coinciding with
152 his or her term on the city council or as mayor and shall serve until his or her successor takes
153 office. All other appointments of members to the authority shall be made for terms of three
154 years and until successors are appointed and qualified. Immediately after such appointments,
155 the members of the authority shall enter upon their duties. To be eligible for appointment
156 as a member of the authority, a person shall be at least 21 years of age, shall be a resident of
157 the City of Peachtree Corners, Georgia, for at least two years prior to the date of his or her
158 appointment, and shall not have been convicted of a felony. Any member of the authority
159 may be selected and appointed to succeed himself or herself. The mayor and city council,
160 in their capacities to the city, may nominate and appoint up to three additional members to
161 the authority who possess knowledge or experience in matters within the power of the

162 authority. The three additional members of the authority shall serve one-year terms and are
163 eligible to be reappointed without limitation. Immediately after their official seating on the
164 authority, the additional members of the authority shall enter upon their duties. A majority
165 of the members of the authority shall constitute a quorum, and no vacancy on the authority
166 shall impair the right of the quorum to exercise all the rights and perform all the duties of the
167 authority, and in every instance, a majority vote of a quorum shall authorize any legal act of
168 the authority, including all things necessary to authorize and issue revenue bonds. The
169 authority shall elect one of its members as chairperson and shall elect a secretary and a
170 treasurer. The secretary and treasurer need not necessarily be members of the authority. The
171 chairperson shall be a nonvoting member of the authority; however, if at any time there are
172 an even number of members on the authority, the chairperson shall be allowed to vote but
173 only to break a tie. The authority may elect a vice chairperson or any number of assistant
174 secretaries or treasurers as it may from time to time deem necessary or desirable. The
175 members of the authority shall not be entitled to compensation for their services but shall be
176 entitled to and shall be reimbursed for their actual expenses necessarily incurred in the
177 performance of their duties. The authority shall make rules and regulations for its own
178 governance, and it shall have perpetual existence. Any change in name or composition of
179 the authority shall in no way affect the vested rights of any person under the provisions of
180 this Act or impair the obligations of any contracts existing under this Act.

181

SECTION 6.

182

Issuance and sale of revenue bonds.

183 The authority shall have power and is authorized from time to time to provide for the
184 issuance and sale of negotiable revenue bonds in the manner provided by Article 3 of
185 Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond Law," for the purpose of paying
186 all or any part of the cost of any one or more projects, including the cost of constructing,
187 reconstructing, equipping, extending, adding to, or improving any such project, or for the
188 purpose of refunding, as provided in this Act, any such bonds of the authority or any other
189 authority or public body previously issued to finance or refinance the cost of a project. The
190 principal of and interest on such revenue bonds shall be a limited obligation of the authority
191 payable solely from the source or sources of funds specified in the indenture or resolution
192 of the authority authorizing the issuance of such revenue bonds. The revenue bonds of each
193 issue shall be issued and validated under and in accordance with the provisions of the
194 "Revenue Bond Law." Such revenue bonds shall mature on such dates, bear interest at such
195 rate or rates, whether fixed or variable, be subject to redemption, and have such other terms
196 as the authority may provide in the indenture or resolution relating thereto.

197

SECTION 7.

198

Power to incur loans or issue notes.

199 The authority shall also have the power to incur indebtedness from time to time for the
200 purpose of financing or refinancing any project or refunding any obligations previously
201 issued for such purpose, or for any other purpose, whether in the form of a loan or through
202 the issuance of notes, and the principal of and interest on such notes or loans shall be a
203 limited obligation of the authority payable solely from the source or sources of funds
204 specified in the resolution or indenture of the authority authorizing such loan or the issuance
205 of such notes. Any such loan or notes shall not be required to be validated as a condition to
206 the issuance thereof and shall have such terms as may be specified by the authority in the
207 resolution or indenture authorizing the same.

208

SECTION 8.

209

Negotiable instruments; bonds or other obligations exempt from taxation.

210 All revenue bonds issued under the provisions of this Act shall have all the qualities and
211 incidents of negotiable instruments under the negotiable instruments law of this state. All
212 such bonds, and any loan incurred or note issued as provided in this Act, are declared to be
213 issued or incurred for an essential public and governmental purpose, and such obligations and
214 the interest thereon shall be exempt from all taxation within this state.

215

SECTION 9.

216

Revenue bonds or notes not a debt or general obligation.

217 Revenue bonds or notes issued under the provisions of this Act or any loan incurred as
218 authorized herein shall not constitute a debt or a pledge of the faith and credit of the State of
219 Georgia or of any political subdivision thereof, including the city, but shall be payable solely
220 from the sources as may be designated in the resolution or indenture of the authority
221 authorizing the issuance of the same. The issuance of such obligations shall not directly,
222 indirectly, or contingently obligate the State of Georgia or any political subdivision thereof,
223 including the city, to levy or pledge any form of taxation for the payment thereof. No holder
224 of any bond or receiver or trustee in connection therewith shall have the right to enforce the
225 payment thereof against any property of the State of Georgia or any political subdivision
226 thereof, including the city, nor shall any such bond constitute a charge, lien, or encumbrance,
227 legal or equitable, upon any such property. All such obligations shall contain on their face
228 a recital setting forth substantially the provisions of this section. Nothing in this section shall

229 be construed to prohibit the State of Georgia or any political subdivision or agency thereof,
230 including the city, from obligating itself to pay the amounts required under any contract
231 entered into with the authority pursuant to Article IX of the Constitution of Georgia or any
232 successor provision, including from funds received from taxes to be levied and collected for
233 that purpose to the extent necessary to pay the obligations contractually incurred by the
234 authority and from any other source.

235 **SECTION 10.**

236 Issuance of bonds or obligations under indentures or resolutions.

237 In the discretion of the authority, any issuance of such revenue bonds, notes, or other
238 obligations may be secured by a trust indenture by and between the authority and a trustee,
239 which may be any trust company or bank having the powers of a trust company within or
240 outside of the State of Georgia. Such trust indenture may pledge or assign fees, tolls, rents
241 revenues, and earnings to be received by the authority, including the proceeds derived from
242 the financing, sale, or lease, from time to time, of any project. Either the resolution
243 providing for the issuance of revenue bonds or other obligations or such trust indenture may
244 contain such provisions for protecting and enforcing the rights and remedies of the owners
245 of such bonds or obligations as may be reasonable and proper and not in violation of law,
246 including covenants setting forth the duties of the authority or any lessee or purchaser in
247 relation to the acquisition and construction of any project, the maintenance, operation, repair,
248 and issuance of any project, and the custody, safeguarding, and application of all moneys,
249 including the proceeds derived from the sale or lease of any project or from the sale of any
250 such bonds, notes, or other obligations, and may contain provisions concerning the
251 conditions, if any, upon which additional bonds, notes, or other obligations may be issued,
252 whether on a parity with or subordinate to any other obligations issued by the authority.
253 Such indenture or resolution may set forth the rights and remedies of the owners of such
254 obligations and of the trustee. Such trust indenture may contain such other provisions as the
255 authority may deem reasonable and proper for the security of the owners of such bonds or
256 other obligations or otherwise necessary or convenient in connection with the issuance of
257 such obligations. All expenses incurred in carrying out such trust indenture may be treated
258 as a part of the cost of maintenance, operation, and repair of the project affected by such
259 indenture.

260 **SECTION 11.**

261 Security of the payment of bonds or other obligations.

262 The authority may assign or pledge any property or revenues to the payment of the principal
263 of and interest on revenue bonds of the authority as the resolution authorizing the issuance
264 of the bonds or the trust indenture may provide. The use and disposition of such property or
265 revenues assigned to the payment of bonds or other obligations shall be subject to the
266 indenture or resolution authorizing the issuance of such revenue bonds or obligations. Any
267 lien created by the authority for the payment of such bonds or obligations may be a first lien
268 or a subordinate lien as the authority may provide, and any such indenture or resolution may
269 provide, at the option of the authority, for the issuance of additional bonds or other
270 obligations sharing any lien on a parity or subordinate lien basis.

271 **SECTION 12.**

272 Refunding bonds or obligations.

273 The authority is authorized to provide by resolution for the issuance of obligations, whether
274 revenue bonds, notes, or other obligations, for the purpose of refunding any revenue bonds
275 or other obligations issued under the provisions of this Act or under any other provision of
276 Georgia law so long as such bonds or other obligations were issued for a purpose or project
277 for which the authority could issue bonds. The issuance of such refunding bonds or other
278 obligations and all the details thereof, the rights of holders thereof, and the duties of the
279 authority with respect to the same shall be governed by the provisions of this Act insofar as
280 the same may be applicable.

281 **SECTION 13.**

282 Principal office; venue.

283 The principal office of the authority shall be in the city, and the venue of any action against
284 it shall be in Gwinnett County. Any action pertaining to the validation of any bonds issued
285 under the provisions of this Act and for the validation of any contract entered into by the
286 authority shall be brought in the Superior Court of Gwinnett County, and such court shall
287 have exclusive original jurisdiction of such actions. Service upon the authority of any
288 process, subpoena, or summons shall be effected by serving the same personally upon any
289 member of the authority.

290

SECTION 14.

291

Validation of revenue bonds.

292 Revenue bonds of the authority shall be confirmed and validated in accordance with the
293 procedure set forth in Article 3 of Chapter 82 of Title 36 of the O.C.G.A., the "Revenue Bond
294 Law," as the same now exists or may hereafter be amended. The petition for validation shall
295 also make a party defendant to such action the city, if the city has or will contract with the
296 authority with respect to the project for which bonds are to be issued and are sought to be
297 validated. The bonds, when validated, and the judgment of validation shall be final and
298 conclusive with respect to the validity of such bonds against the authority and against all
299 other persons or entities, regardless of whether such persons or entities were parties to such
300 validation proceedings.

301

SECTION 15.

302

No impairment of rights.

303 While any of the bonds or other obligations issued by the authority or any interests in
304 contracts of the authority remain outstanding, the powers, duties, or existence of the authority
305 or its officers, employees, or agents shall not be diminished or impaired in any manner that
306 will affect adversely the interest and rights of the holders of such bonds or obligations or
307 such interests in contracts of the authority. The provisions of this section shall be for the
308 benefit of the authority and the holders of any such bonds or obligations and interests in
309 contracts of the authority and, upon the issuance of bonds or obligations or the creation of
310 interests in contracts of the authority under the provisions of this Act, shall constitute a
311 contract with the holders of such bonds or obligations or such interests in contracts of the
312 authority.

313

SECTION 16.

314

Trust funds; permitted investments.

315 All moneys received by the authority pursuant to this Act, whether as proceeds from the sale
316 of revenue bonds or obligations of the authority, as grants or other contributions, or as
317 revenues, income, fees, and earnings, shall be deemed to be trust funds to be held and applied
318 solely as provided in this Act and in such resolutions and trust indentures as may be adopted
319 and entered into by the authority pursuant to this Act. Any such moneys or funds may be
320 invested from time to time in such investments as may be permitted under the indenture,
321 agreement, or resolution establishing the fund or account in which such funds are held, or if

322 not held in such a fund or account, in such investments as would be permitted for
323 investments of a development authority created under Code Section 36-62-1, et seq., of the
324 O.C.G.A.

325 **SECTION 17.**

326 Power to set rates, fees, and charges.

327 The authority is authorized to prescribe and fix rates, fees, tolls, rents, and charges and to
328 revise, from time to time, and collect such revised rates, fees, tolls, rents, and charges for the
329 services, facilities, or commodities furnished, including leases, concessions, and subleases
330 of its projects, and to determine the price and terms at and under which its projects may be
331 sold, leased, or otherwise disposed. The authority may establish in its discretion procedures
332 for contracting for any work done for the authority or for the acquisition, sale, transfer, or
333 lease of any property, real or personal, of the authority.

334 **SECTION 18.**

335 Essential governmental function; no taxes or assessments.

336 All property or interests in property owned by the authority shall be public property held and
337 owned for governmental purposes and shall be exempt from ad valorem taxation. The
338 exercise of the powers conferred upon the authority hereunder shall constitute an essential
339 governmental function for a public purpose and the authority shall not be required to pay
340 taxes or assessments upon any of the property acquired by it or under its jurisdiction, control,
341 possession, or supervision or upon its activities in the operation and maintenance of property
342 acquired by it or of buildings acquired or erected by it or any fees, rentals, or other charges
343 for the use of such property or buildings or other income received by the authority. The tax
344 exemption herein provided shall not include an exemption from sales and use tax on property
345 purchased by or for the use of the authority.

346 **SECTION 19.**

347 Immunity of authority and members.

348 The authority shall have the same immunity and exemption from liability for torts and
349 negligence as the City of Peachtree Corners; and the officers, agents, and employees of the
350 authority, when in the performance of the work of the authority, shall have the same
351 immunity and exemption from liability for torts and negligence as the officers, agents, and
352 employees of the City of Peachtree Corners.

353 **SECTION 20.**

354 Authority property not subject to levy and sale.

355 The property of the authority shall not be subject to levy and sale under legal process.

356 **SECTION 21.**

357 Authority area of operation.

358 The scope of the authority's operations shall be limited to the territory embraced within the
359 territorial limits of the city, as the same now or may hereafter exist; provided, however, that
360 nothing in this section shall prevent the authority from contracting with any entity, public or
361 private, outside of the city with respect to any project located in or outside of the city if the
362 authority shall determine that entering into such contract is in the best interest of the
363 authority and in furtherance of its public purposes.

364 **SECTION 22.**

365 Supplemental powers.

366 This Act does not in any way take away from the authority any power which may be
367 conferred upon it by law but is supplemental thereto.

368 **SECTION 23.**

369 No power to impose taxes.

370 The authority shall not have the right to impose any tax on any person or property.

371 **SECTION 24.**

372 Act to be liberally construed.

373 This Act shall be liberally construed to effect the purposes hereof.

374 **SECTION 25.**

375 Severability of provisions.

376 Should any sentence, clause, phrase, or part of this Act be declared for any reason to be
377 unconstitutional or invalid, the same shall not affect the remainder of this Act, or any part
378 hereof, other than the part so held to be invalid, but the remaining provisions of this Act shall

379 remain in full force and effect, and it is the express intention of this Act to enact each
380 provision of this Act independently of any other provision hereof.

381 **SECTION 26.**

382 Effective date.

383 This Act shall become effective upon its approval by the Governor or upon its becoming law
384 without such approval.

385 **SECTION 27.**

386 General repealer.

387 All laws and parts of laws in conflict with this Act are repealed.